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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,890	12/21/2000	Adrian Sparks	476-1969	1275

7590 01/05/2004

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Chicago, IL 60690-2786

EXAMINER

TRAN, DZUNG D

ART UNIT	PAPER NUMBER
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2633

DATE MAILED: 01/05/2004

5

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/745,890

Applicant(s)

SPARKS ET AL.

Examiner

Dzung D Tran

Art Unit

2633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21/21/2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Specification***

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Fishman US patent no. 6,046,832.

Regarding claims 1, 3 and 4, Fishman discloses a network node comprising a plurality of network nodes (figure 2, elements A, B, C, D) each network node (for example node A) being arranged to provide optical signals to at least two transmission paths (figure 2, elements 70, 80), the node comprising a load sharing router (figures 2, elements 100) having at least two ports a first port connected to a working transmission path and a second port connected to a shared protection path (figure 2, col. 5, lines 12-43).

Regarding claims 2, 5 and 6, Fishman further discloses the ring optical network (figure 2, col. 4, lines 49-52) wherein an optical switching device (for example 100 in node A) arranged to switch the optical signals from working path to spare paths (col. 5, lines 12-43).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fishman US patent no. 6,046,832 in view of Shanklin et al. US patent no. 6,578,147. Regarding claim 7, as per claims above, Fishman discloses all the limitations except for a computer program arranged to control the transmission packet. Shanklin discloses the load balance software can be programmed so that only packets destined for a given range of IP addresses are copied to intrusion detection sensors (i.e. control the transmission of packet traffic) (col. 6, lines 29-56). Since use of software programming for controlling the optical signal transmission is well known in the art for redirecting the optical signal from a congested working path or an over load working path to the protection paths or alternate paths. It would have been obvious to an artisan at the time of the invention to include the teaching of Shanklin in the system of Fishman. One of ordinary skill in the art would have been motivated to do this in order to recovery operation performed of the optical system in case of a failure of break of the transmission path or traffic congestion on one path or at fault. Thus, it improves the reliable of the optical system and increase the capacity of the network.

Regarding claim 8, Shanklin further discloses a router or switch is processor-based and includes load balancing programming, which controls how packets are distributed from the internetworking device to the sensors for processing (col. 2, lines 54-58).

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Wils et al. U.S. patent no. 6,397,260. Automatic load sharing for network routers
- b. Gervais et al. U.S. patent no. 5,856,974. Internetwork address mapping gateway
- c. Wilford et al. U.S. patent no. 6,111,877. Load sharing across flows

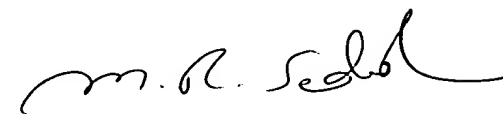
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dzung Tran whose telephone number is (703) 305-0932.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Jason Chan, can be reached on (703) 305-4729.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Art Unit: 2633

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

  
M.R. SEDIGHIAN  
Patent Examiner  
Art Unit: 2633